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PROCEEDINGS

of a

MILITARY COURT FOR THE TRIAL OF WAR CRIMINALS

held at

THE WAR CRIMES COURT, HAMBURG

on

THURSDAY, 18th OCTOBER, 1945

upon the trial of

Kapitänleutnant HEINZ BOE

Leutnant zur See AUGUST HOFFMANN

Marine Stabsarzt WALTER WEISSETHING

Kapitänleutnant (Ing) HANS RICHARD LIEZ

and Gefreiter SCHWENKE

SECOND DAY

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Geleitler SCHNEIDER

PRESIDENT:

Brigadier C.I.V. Jones, OBE,

Commander 106 A.A. Bde.

MEMBERS:

Brigadier R.M. Jerrom, DSO MC

Commodore D. Young-Jameson,

Royal Navy

Captain Sir Roy Gell, KBE,

Royal Naval Reserve

Lieutenant-Colonel H.K. Piper,

Royal Artillery

Captain R. Matpherson,

Royal Hellenic Navy

Commander N.I. Sarris,

Royal Hellenic Navy

JUDGE ADVOCATE:

Major A. Melford Stevenson, ED, Deputy Judge Advocate Staff,
Judge Advocate General's Office.

SECOND DAY

(As 1415 hours the court re-assembles pursuant to the adjournment, the same president, members and judge advocate being present)

(The accused are again brought before the court)

THE JUDGE ADVOCATE: Dr. Todsen, I think your client is first on the charge sheet and therefore your defence ought to start first. According to English procedure you have got at this point, as you are going to call evidence of fact other than the accused, a right to open, that is to say to make a speech explaining to the court what your defence is. Then you can call your client and thereafter you can call any witness whom you want to call and then you can make later on another speech. Major Larson, I do not know whether the commencement of all the defending counsel has been discussed as to how the matter of speeches should be dealt with.

MAJOR LARSEN: It has been discussed and I gather that Dr. Todsen, myself and Dr. Fabst wish to make short opening addresses, and also we would pray the court's indulgence to allow Professor Wagner, who is an eminent authority on international law, to make a short address on certain important questions of international law which may arise during the course of the defence.

THE JUDGE ADVOCATE: On behalf of all the accused?

MAJOR LARSEN: That is so.

THE JUDGE ADVOCATE: I am sure the court will accept that, and he had better be heard when it is convenient to all of you, I do not think it matters from the point of view of the court when he is heard.

COL. FAIST: I take it he is now instructed by the accused because otherwise he would not be in a position to address the court on a point of international law at all.

MAJOR LARSEN: That is so; he has been instructed by the accused as an advocate.

THE JUDGE ADVOCATE: Dr. Todsen, would you like to open your case now?

DR. TODSEN: May I address the court in German and then have it translated?

THE JUDGE ADVOCATE: Yes.

(Dr. Todsen addresses the court in German and his address is translated by the interpreter as follows) :-

DR. TODSEN: In opening this defence I do not consider it as my task to go into all the details of this case which were brought forward by the prosecution; that remains to my plea. I am only concerned to make clear the general trend of the defence. The general trend of the defence is the submission that the commander of the U-boat acted not out of sheer cruelty or revenge but he merely decided to eliminate all traces of the sinking. In the submission of the defence his orders were the result of a very special situation, a situation forced upon him in which he found himself and his vessel. The substance of the evidence which the defence will bring forward depends upon the question as to which rules of international law may be brought to bear upon this case. The submission of the defence on this question as to which rules of international law arise for consideration will, with the permission of the court, be dealt with by Professor Wagner. May Professor Wagner now address the court?

THE JUDGE ADVOCATE: Yes.

PROFESSOR WINTER, yesterday the question was raised by high authority in this court as to what might be the problems of international law in a case which is apparently simple if the alleged facts can be proved, and later on I think it was the learned prosecutor who reminded one of my colleagues of a sentence of our Supreme Court against H-Post Commander Mittemar. That decision of our Supreme Court I defended against severe criticism in my first book on problems of war crimes, which was published in Hamburg in 1925. Since then the conditions of submarine warfare have been radically changed. Some of these technical and legal problems were also dealt with in literature, for instance by Professor Bohornborn, of Kiel. But for most of them we have to call witnesses, witnesses like Captain Schme and Mr. Koenig. After hearing the evidence we hope to get from them there may be a quite different impression. We may ask this question: Is this a case of efforts and sailors having actually killed helpless and shipwrecked human beings when they ceased to be combatant, or was it a captain and his crew running for safety in an extreme emergency, a captain and his men eliminating all traces of the sinking by firing, not at human beings, but at wreckage which might have betrayed them to the Air Force?

I have always rejected all militaristic doctrines on the necessity of war - Je ne sais pas de la guerre; but I may now remind you of the just conception of emergency and necessity as explained by one of your greatest authorities, John Westlake.

In the Collected Papers of John Westlake, on page 117 it says this: "to show a necessity of self defence instant, overwhelming, leaving no choice of means and no moment for deliberation", and for this last point Westlake gives some words of his own. That was a quotation from the Caroline case. Westlake himself says: "This was a correct statement of law except so far as concerns the emergency leaving no moment for deliberation, which is an unnecessary condition if the emergency is such that deliberation can only confirm the propriety of the act of self preservation."

Major Larnon in the cross-examination of Mr. Koenig has already pointed out that even the affidavit by Captain Larnon is not incompatible with our submission, for there Captain Bok is only said to have replied in the critical moment. In his affidavit Larnon says: "I assumed that it was intended to kill the survivors. I thereupon approached my captain and informed him that I was not in agreement with his order and then Captain Bok replied that he was nevertheless determined to eliminate all traces of the sinking." You remember that Major Larnon told us that there are two different interpretations possible and that the second which we suggested, and which I suggest now, was and is that only the elimination of wreckage was intended and that the other things was only perhaps taken into consideration as a secondary consequence, perhaps not even necessary.

Submarine commanders have long been in an unfortunate position. When the submarine was a comparatively new weapon the Washington Convention of February 1914, wanted to treat the commanders of submarines in certain cases as pirates. This, however, was never ratified by the countries concerned, which were meanwhile matured by experience.

The extreme emergency in which Captain Bok acted is our first point connecting us with an important question of international law in regard to which I only give you the quotation from the Caroline case and Westlake's words commenting on it.

Secondly we are concerned with the evidence of a plea of superior command in international law. I want to postpone what I have to say about the plea of superior command until my final address. I admit that I myself stick to the good old English principles laid down in the Caroline case. These principles may be stated like this, that ever since the Caroline case it has been a well established rule of international law that an individual forming part of a public force and acting under authority of his own government is not to be held answerable as a private trespasser or malfactor, that what such an individual does is a public act done by a person in His Majesty's service acting in obedience to superior orders and that the responsibility, if any, rests with His Majesty's Government. Superior command as excluding personal responsibility has also been recognised in the treatment of prisoners of war since the Convention of 1929.

Though there are some points of difference, I feel that in one respect I am also in agreement with Mr. Jackson, who made out all these charges against the war criminals in this respect, that we must keep in mind always that we have to view the plea of superior command from three points of view: as a ground of justification, or of exculpation, or of mitigation.

Thirdly, I also postpone what I intend to say on the modern conception of war crimes. I will ask you later on, when I ask you to let me say a final word to plead the case, to hear me then rather patiently; but I will not suggest anything that may lead to a discussion between English and German lawyers. There must not be such a clash of opinions. I think we all agree with this. Whatever may be the merits of the modern conception of war crimes it must not be permitted to obscure our old and sound principles of criminal law and procedure.

Fourthly, when hearing the witnesses we must always view the charges against the accused from a "Tatbestand", as we call it in German. That is a word which is very difficult to translate, but which I think means a central conception of German criminal law, and not so foreign as it may seem to you at the first moment but quite familiar to every state based on law. It is only incompletely rendered by the actual facts fixed by law as a pre-supposition of punishment. There must not be only an imperative law, there must be a progress of actual facts stated as a pre-supposition of punishment.

Our law has been good so long as it was law and a great principle of it is: "Nullum crimen sine lege, nulla poena sine lege". There are still enough lawyers in Germany who stood by the great principle of the *Rechtstat*, the rule of law, and who need not regret it, and they can speak out today as they did in former times. This is a principle of criminal law: "Nullum crimen sine lege, nulla poena sine lege" - "No crime without the preceding law, no punishment for an act which was committed before the law was enacted". I think this must not be obscured and there is a danger that it is, but I shall have to say something about it later on after we have heard the witnesses.

I should like all of us to view everything a witness says about the charge and about one of the accused in this way, that it can be only a charge based upon criminal law which was in existence when the alleged acts might have been committed.

Fifthly, war crimes also pre-suppose a guilty knowledge, a *mens rea*.

All these questions involved in international law, the plea of superior command and the case of emergency and necessity, must be viewed from this point of view, that there must be a *mens rea*, a guilty knowledge.

Sixthly and lastly, in regard to war crimes and procedure may I remind you of one of the objections which my learned friend Major Lerman

made in connection with regulation 8(1)(a) of the rules of the courts. It was a question of admitting secondary evidence. We do not question the right of the court to admit it; these are the rules of our procedure; but I think we were told by high authority in this court that in itself it is regrettable that secondary evidence is used, and you will remember that in a very clever way Major Larson told us that what was mentioned here even amounted to tertiary evidence, not only secondary evidence. The old and sound rules of criminal law and procedure ought to be obeyed, most particularly in cases of war crimes, because there are much deeper problems connected with war crimes than those which I am mentioning now. They lie right at the root of these trials; they are problems which I would not venture to touch in an opening address. I ask you for permission to say something about this later on; but I hope that I do not say anything that could cause, or might cause, any dissemination. I only want to point out what we have to keep in mind when hearing the witnesses.

THE JUDGE ADVOCATE: I understand that the address which Professor Wegner has just made was made on behalf of all the accused; is that right?

Dr. TODSEN: Yes.

THE JUDGE ADVOCATE: Dr. Todsen, the position is that you have opened your case. Do you want to say any more in opening?

Dr. TODSEN: Yes, one word. One of the points of the defence is that there was during the last war a practice on both sides that under certain conditions you might be allowed even to attack lifeboats and even survivors in cases of emergency. I should like to ask the court whether the court accepts this exception, or if the defence should be obliged to bring evidence on this point, that there was such a practice on both sides.

THE JUDGE ADVOCATE: A practice of doing that?

Dr. TODSEN: To attack even lifeboats and survivors under certain conditions of emergency.

THE JUDGE ADVOCATE: This court is only concerned with the question of whether what was done here was a war crime. I do not think a practice of other nations at other times is relevant.

Dr. TODSEN: I think that if there was a practice during the last war to attack even lifeboats under certain conditions, by such a practice the war usage not to attack lifeboats under all conditions has been changed by practice.

THE JUDGE ADVOCATE: Are you saying that you can show that there was a practice during the last war to attack lifeboats containing survivors from a sunken ship before those survivors had themselves manifested any hostile action?

Dr. TODSEN: Yes, I think I can prove some cases in which even lifeboats containing survivors were attacked while they were trying to escape from the scene of the battle.

THE JUDGE ADVOCATE: If you want to give this evidence of fact, I do not think the court can exclude it. What do you say, Col. Falser?

Col. FALSER: I do not think the court can exclude it, but my recollection of the Llandovery Castle case which has been referred to -----

THE JUDGE ADVOCATE: But this is giving evidence about what is said to be a practice.

COL. HALSE: I have no knowledge of such a practice and it may be
that if any such evidence is given I shall have to ask for an
adjournment in order to get some evidence to rebut it.

THE JUDGE ADVOCATE: That is a risk which I think we will take. Dr.
Todsén, if you want to call evidence of a practice of the kind
you have described, the court will allow you to call such evidence
as part of your defence.

Dr. TODSEN: I thought I could have avoided it because I thought it
would be known that such a practice actually existed.

THE JUDGE ADVOCATE: I think that if you want to call the evidence
you had better do so. Do you want to say anything more
in opening ?

Dr. TODSEN: No.

THE JUDGE ADVOCATE: Are you ready now to call your
client ?

Dr. TODSEN: Yes.

THE ACCUSED, Kapitainleutnant Heinz ROK, takes his stand at the place from which the other witnesses have given their evidence, and having been duly sworn is examined by DR. TODSEN as follows:-

- Q. What rank did you have at the outbreak of war? A. I was the commanding officer of a minesweeper.
- Q. Up to what time? A. Up to May 1942.
- Q. When did you volunteer to the U-boat flotilla? A. In February 1942.
- Q. What kind of training did you get when you were preferred to the U-boat flotilla? A. I went to the U-boat training school at Pillau. I took some courses at Weppen and I took a commander's course under the instruction of Kapitainleutnant Mohr.
- Q. Did you go together with Kapitainleutnant Mohr on the sea? A. Yes, I went to sea with Kapitain Mohr.
- Q. Were you then ordered to your U-boat? A. Yes.
- Q. When you left with your U-boat was it your first journey as a U-boat commander? A. Yes.
- Q. When did you leave Kiel? A. January 18th 1944.
- Q. Were you given any specific instructions before leaving Kiel? A. Yes, I was given detailed instructions by the commander of the U-boat flotilla in Berlin.
- Q. It was not the commander of the U-boat flotilla; it was the commander of the HDU in Berlin. Were you told that your job would be of specific importance? A. Yes, we were told that the U-boat war was of special importance at that time.
- Q. How did it come about that U-boat warfare at this time was of specific importance? A. Because at the lecture we had it was said that U-boat warfare was at the time the only offensive weapon left to Germany.
- Q. Was it pointed out to you what kind of enemy opposition you might encounter in the various parts you might travel through? A. Yes, the Atlantic Ocean was divided into several zones.
- Q. Were you also instructed by Kapitainleutnant Schnee before you left port? A. Yes, Kapitainleutnant Schnee gave us specific instructions before leaving port.
- Q. Were you told that you might encounter heavy opposition in the North Atlantic? A. Yes.
- Q. Were you told that in the South Atlantic the danger of being discovered was not as high? A. Yes, we were told that.
- Q. - but if you were discovered the danger was even greater? A. Yes, we were told so.
- Q. More so than in the North Atlantic? A. Yes.
- Q. Were you in particular told that after discovery in the South Atlantic you would have to count on the entire offensive action of all aircraft in this area on to you?

THE JUDGE ADVOCATE: Dr. Todsen, it will be more impressive to the court if you allow this witness to give his own evidence, rather than put

answers into his mouth; that is what we call a leading question. Try not to lead him; try to put to him questions which do not suggest the answer that you want.

DR. TODSEN: I am not accustomed to this procedure.

THE JUDGE ADVOCATE: No-one is making any kind of complaint to you because you are obviously conducting this case under great difficulties.

DR. TODSEN: What instructions were given to you as to what kind of dangers you might be faced with after crossing the equator?
A. I was also told that in the South Atlantic also aircraft reconnaissance might be encountered.

Q. What did you therefore have to do? A. I had to be concealed as far as possible.

Q. What did you know about Freetown and Ascension? A. I knew that there was some air traffic between Freetown and Ascension.

Q. Did you know if there were any airplane bases in Freetown and Ascension? A. I knew that there were bases in Freetown and Ascension.

Q. Therefore you would assume that there was special danger on account of this between Freetown and Ascension? A. Particularly between Freetown and Natal, firstly, and Freetown and Ascension secondly.

Q. Did you know about that danger by certain examples? A. A great number of U-boats were sunk in this particular spot at that particular time.

Q. Which course did you take when you left Kiel? A. I went through the Sound to Christiansund south, from there to the middle of the North Atlantic, from there to the middle of the Atlantic, west of the Azores, then to the middle Atlantic between Freetown and Natal, and between Ascension and Freetown.

Q. When going through the North Atlantic were you submerged or surfaced? A. I was submerged most of the time; only when charging batteries did I surface.

Q. How many days had you been travelling submerged? A. Three weeks in the following fashion: Day-time, submerged, and night-time, surfaced.

Q. How did the first part of the journey affect you and your crew? A. The journey was very strenuous due to the continual submerging of the submarine and particularly strenuous in the zone of the equator on account of the continual submerging.

Q. Could you carry on like this indefinitely? A. I had to carry on for tactical reasons.

Q. Had you decided to carry on submerged until you got to the Indian Ocean? A. I had to surface as soon as possible.

Q. From when on did you intend to surface again? A. As soon as I had passed the line Freetown - Ascension.

Q. What possibility did you have on your U-boat to eliminate the danger of being discovered by an airplane? A. In the first place a good look-out and secondly Radar apparatus.

Q. Did you notice any airplanes after you had entered the area of the South Atlantic? A. At one time I was rather careless and did not submerge immediately at break of dawn. At that spot I noticed a plane immediately.

I could, however, submerge in good time. Later on, next day, I tried to surface for one day in this zone and I noticed again another plane; I managed to dive again unnoticed.

- Q. When did you sight the "Peleus"? A. On the 13th March at 1700 hours.
- Q. Did you chase her surfaced? A. I chased her in daylight and attacked when it was completely dark.
- Q. Were you at any time on the chase of the Peleus under water? A. No.
- Q. At what time did you sink her? A. At about 1930 hours.
- Q. What was the visibility at that time? A. It was a very dark night.
- Q. What effect did the two torpedoes have which you fired? A. Both torpedoes had magnetic fuses. The "Peleus" burst into pieces completely. The detonation was very impressive.
- Q. How long did it take for the ship to sink? A. It sank immediately after the detonation of the torpedoes.
- Q. About how many minutes? A. Roughly three minutes, but you could not talk about a ship, it was just pieces, wreckage.
- Q. Did you notice any survivors? A. Yes.
- Q. How many, approximately? A. I was very near the spot of the sinking and immediately after the sinking several lights could be noticed on the rafts. I could hear whistles and shouting. I could not say the exact number.
- Q. Obviously you cannot be expected to give the exact number of people, but according to your estimation how many people could you see floating about? Was it the greater part of the crew or the lesser part?
A. There were not very many; I think there were about twelve.
- Q. Did you give any orders to establish the identity of the ship?
A. I manoeuvred the boat on the spot of the sinking, ordered small arms on deck, pistols and machine pistols, to prevent danger to the boat by the survivors, as I had heard of cases where that actually happened. I then ordered the Chief Engineer who spoke English to go forward on deck and to interrogate survivors, as I could not establish connection from the bridge.
- Q. Did one Greek member of the crew then come on board? A. Yes, one or two, I cannot remember very well.
- Q. After the interrogation of the Greeks was terminated what did you do then? A. The Chief Engineer came on to the bridge and reported. I carried on on my way with slow motion.
- Q. What was left at that moment of the wreckage of the ship? A. Several rafts were to be seen and several bits of wreckage such as barrels and connected planks.
- Q. After you left this spot did you come back again? A. Yes, I turned about after I had travelled about a thousand metres.
- Q. What made you change your mind and turn round? A. I had formed the decision to destroy all pieces of wreckage and rafts.
- Q. Did you talk this decision of yours over with anybody? A. No, I formed it myself.

- Q. What order did you give verbally? A. I gave the order to bring machine guns on the bridge.
- Q. What kind of order did you give to open fire? A. I was standing next to one of the machine guns and I gave the order to open fire on to one of the floating rafts.
- Q. For what reason did you think the rafts were of danger to you? A. For two reasons, firstly because they would show to an airplane the exact spot of the sinking, and secondly because rafts at this time of the war, as was well-known, could be provided with modern signalling communication.
- Q. What do you know about the painting of rafts? A. Mostly they are in very bad colour condition.
- Q. When you opened fire on to the rafts did you see any human beings on the rafts? A. No, there were none to be seen.
- Q. What did you reckon to achieve by your machine gun fire? A. I reckoned that the rafts were placed on barrels or empty hollow bodies. I calculated that through the machine gun fire I could pierce the hollow bodies and that the raft would sink.
- Q. Did that particular raft that you were firing at sink? A. No, it did not sink.
- Q. Did you at any time give the order to fire at survivors? A. No.
- Q. Did you see at any time that shots were being fired at survivors? A. No, I did not see it.
- Q. Did you not realise at the time that you could not possibly erase all traces of the sinking? A. I realised that, but I only wanted to destroy the bigger pieces which were recognisable to airplanes.
- Q. Did you also have hand grenades brought up on deck? A. Yes, I also ordered hand grenades on deck.
- Q. On what grounds? A. After I realised that by mere machine gun fire the rafts did not sink. I wanted to try it by the hand grenades.
- Q. Did you see how the hand grenades were thrown at the rafts? A. Yes, I was standing nearby.
- Q. Did you see that by the throwing of the hand grenades survivors were killed or injured? A. No, on the raft the hand grenades were thrown at there were no survivors.
- Q. How do you explain the fact that on the raft which you were throwing hand grenades at there were no survivors? A. I thought they had jumped out of it.
- Q. Did anybody oppose your orders to fire at beams and rafts? A. I think "oppose" might not be the right expression, but the leading engineer objected.
- Q. What did the leading engineer say? A. He said he did not agree with it.
- Q. Did he say for what reason he did not agree with it? A. I cannot remember.
- Q. Did you reply to him? A. I told him that despite everything I thought it right and proper to destroy all traces.
- Q. What do you mean by the words "despite everything"? A. Although he did not agree.

- Q. Was it not clear to you that through sinking the wreckage and the rafts you would also sink the survivors? A. It was clear to me that the possibility of saving their lives disappeared.
- Q. Could you not take the survivors on board the U-boat? A. That was quite impossible because it was against my orders.
- Q. Why did your orders not allow you to do that? A. I had a long way to go yet, and I did not have sufficient provisions to take any more people on board.
- Q. Did you have no opportunity to shorten your voyage? A. No, my area of operations was in the Indian Ocean and the provisions were not plentiful.
- Q. Did you see any possibility to minimize the risk to the survivors? A. No, I did not see any possibility.
- Q. Was the situation this, the boat and the crew on the one hand and the destruction of the rafts on the other hand? A. I was under the impression that if I did not sink the rafts my boat was lost.
- Q. Did you know Rollmann? A. Yes, I did know Rollmann.
- Q. What can you say about Rollmann as a U-boat commander? A. I cannot say anything about him as I do not know him sufficiently.
- Q. Did you know whether he was experienced or inexperienced? A. He was known as a very good and experienced U-boat commander.
- Q. Before the sinking of the "Peleus" did you hear anything about Rollmann? A. Yes, he had been lost.
- Q. Whereabouts had he been lost? A. It was assumed that it happened in the area between Freetown and Natal.
- Q. When did you hear of the loss of Rollmann? A. Before I left.
- Q. Before the sinking of the "Peleus" did you ever imagine yourself in the position in which you found yourself with regard to the sinking of the rafts? A. No, I had never before imagined such a special occasion.
- Q. Did you at any time order a raft to approach your boat? A. Yes, for the first interrogation in order to find out the name of the boat.
- Q. And later on once more? A. No, no more.
- Q. Did you hear if after the interrogation of the Greek member of the crew another member of your crew called over a raft? A. No, I did not hear anything about that.
- Q. Were you on the bridge all the time? A. I was on the bridge all the time.
- Q. Did you issue special aiming orders? A. No.
- Q. Why did you order the signal lamp to be put on? A. We were very surprised to see that the rafts did not sink; that is why once we directed the signal lamp at one of the rafts to find out why the rafts had not sink.
- Q. Did you shine the signal lamp only once, or later on several times? A. I think only once.
- Q. When you had the signal lamp put on did you see any survivors then?

A. No, none could be seen.

Q. At what time did you leave with your boat the spot of the sinking?

A. I think at one o'clock.

Q. Before leaving the spot did you at any time hear a member of your crew call out: "Kill them all"? A. No, I did not hear anything like that, and I believe it is quite impossible that English was spoken on our bridge.

Q. After you had left the spot of the sinking did you address the crew?

A. I left the bridge and went into the control room and spoke to the crew over the loudspeaker system. I was under the impression that the mood on board was rather a depressing one; I myself was in the same mood. On account of that I said to the crew that with a heavy heart I had finally made that decision.

THE JUDGE ADVOCATE: What decision? A. To destroy the remainder of the sunk ship.

DR. TØDSEN: That is not quite a translation; it could be "wreckage," it could be "rafts."

THE JUDGE ADVOCATE: In French it would be "debris" - wreckage?

DR. TØDSEN: Literally it means "all that has been left by the sunken ship."

THE JUDGE ADVOCATE: That included survivors, did it not? A. I cannot remember the verbal message any more.

Q. That is not what I am asking. Did you say just now that you had made your decision with a heavy heart? A. Yes.

Q. That was the decision to destroy what you called the "uberreister"? A. Yes.

Q. The uberreister included survivors, did it not? A. I do not know exactly the words I did use at that time.

Q. The decision of which you have spoken was a decision to destroy among other things, survivors, was it not? A. It was clear that through destroying the rafts and wreckage, survivors also would die.

DR. TØDSEN: When you decided to destroy the remainder of the boat did you think, for instance, of what your enemy would have done in a similar position?

A. I had been told from the two officers of the boat "Hartenstein" that after that boat had saved the lives of many survivors the boat was located by an airplane, the boat showed the Red Cross sign and a number of their survivors, a flying officer, had with a signal lamp given some signals to the airplane, not to attack the boat on account of survivors being on board, including women. The plane left, and after a time it returned and attacked the boat, and the boat was forced to unload the survivors again in order to dive, and it survived only with some damage. This case I had been told about before the beginning of my voyage. This case showed me that on the enemy's side military reasons go before human reasons, before saving the lives of survivors. For that reason I thought my measures justified.

Q. Therefore that military reason was decisive for you, namely the saving of your boat? A. At that time those two cases seemed similar to me. In that case there had been military reasons decisive, and also in my own case military reasons were decisive.

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Cross-examined by Colonel BAISR.

- Q With regard to the incident to which you referred at the end of your examination-if chief when the U Boat was attacked from the air, when did that occur? A. 1942.
- Q As a result of that attack were any orders issued by B.D.U.? A. I do not know.
- Q When you went on the first cruise of U 352 what orders did you receive from B.D.U.? A. It was a booklet of orders.
- Q Were there any orders with regard to survivors of torpedoed ships? A. Yes, it was forbidden to take on board survivors of ships because the U Boat would be endangered through such an action.
- Q Were any other orders given with regard to survivors? A. Yes, captains and 1st officers, navigators, pilots, should be taken on board if possible.
- Q Did you in this case contemplate the possibility of taking on board the captain and navigator? A. Yes, I tried to find the captain.
- Q What efforts did you make to try and find the captain? A. Right at the beginning before the first interrogation we called out asking where the captain was.
- Q What reply did you get? A. He could not be seen.
- Q Did you then try and find the first officer? A. No.
- Q Did you receive any special orders from Captain Seimes? A. No, there were only orders of a general tactical nature.
- Q Did that give your route? A. No.
- Q How did you get your route? A. I received the route just before leaving in a written order on board.
- Q Did you keep to that route? A. Exactly.
- Q You say you sighted the "Palau" in daylight? A. Yes.
- Q When you were surfaced? A. Yes.
- Q Did you give them any signal to heave to, to stop? A. No, we were a good distance away and it was our job to get ahead of the boat, to get in front of it.
- Q The actual sinking took place after dark? A. Yes.
- Q Was there a moon? A. No.
- Q After the sinking how many rafts did you see in the water? A. About six.
- Q Large rafts? A. About 2 1/2 square metres, roughly.
- Q And you also saw at least 12 members of the crew? A. No, I only had the impression from calls and whistles.
- Q You knew that there were a number of people round the rafts? A. At the interrogation of the survivors there were three of the crew on the raft.

- Q Was there still whistling from other places during the interrogation, indicating that there were other people in the water ?
A. The whistling and shouting soon ceased.
- Q Was it going on while the persons were being interrogated ? A. No.
- Q Did you make any enquiries as to how many survivors there were from the persons interrogated ? A. No.
- Q Was not that an important matter to find out ?
A. At that time it did not seem important to me.
- Q Did you mind how many people were going to be left on rafts ?
A. I did not take any interest in that as I only wanted one in order to ask the name of the ship.
- Q Were you not concerned to see that people who are shipwrecked are at any rate safely on rafts ? A. My only concern was to find out the name of the ship.
- Q And to take no action at all with regard to survivors ?
A. I could not help then.
- Q Having had the members of the crew interrogated and after they had left your ship what did you do ? A. I started the boat on a slow motion.
- Q What was in your mind in doing that ? A. The boat should be kept going.
- Q How far did the boat go ? A. About a thousand metres.
- Q Had you when you started going on the run of a thousand metres made up your mind to do anything ? A. Yes.
- Q What ? A. To destroy the rafts.
- Q But you went away a thousand metres and then came back before you made any attempt to do it ? A. The machine guns had to be got ready.
- Q Were the machine guns got up on deck during the interrogation or afterwards ? A. As far as I can remember, afterwards.
- Q When were the hand grenades brought out on deck ?
A. After I had made certain that I could not destroy the rafts with machine gun fire.
- Q You heard witnesses say yesterday that the machine guns and the grenades came up together ? A. I think that is very unlikely; however, it is possible that the hand grenades were made ready below deck.
- Q Why should hand grenades be made ready below deck ?
A. As I understood it from the witnesses, the order was given below deck into the boat only to get small arms ready and no special descriptions of arms.
- Q Do hand grenades usually come up on deck when you order small arms ?
A. Yes, everything is put at the ready in the conning tower and on further orders it is passed on to the bridge.
- Q Had you got a set drill for this ? A. No.
- Q There was no automatic action when you sank a ship ? A. No.
- Q The firing went on for how long ? A. I think until a quarter to 1.
- Q It started about 2000 hours ? A. I do not know that.

- Q But the ship was sunk at 1930 hours ?
A. It is a question of watches; it has to be cleared up. Our ship clock was according to Central European time.
- Q It does not matter what time the clock was keeping; were you still firing for five hours ? A. I did not look at the clock but it is possible that it was five hours.
- Q During that five hours how many times did you check up to see whether the rafts were still there ? A. I do not know.
- Q Once or more than once ? A. The rafts were still there.
- Q In regard to the signal lamp which you used, did you direct it on to one raft or on all the rafts ? A. At one raft only.
- Q Why did you not look at the others ? A. I only wanted to find out how much damage was done to the raft because I could not understand why the raft was not destroyed or sunk.
- Q It was essential that the rafts should be destroyed ? A. Yes.
- Q And at 1 o'clock the rafts were not destroyed ? A. No.
- Q Why did you stop firing at the rafts at 1 o'clock ?
A. I saw no further possibility to destroy the rafts. I tried it with machine gun fire, hand grenades and also through ramming, but it was no good.
- Q Was it not because there were no more survivors left ?
A. I did not concern myself with that.
- Q After the incident you spoke on the loudspeaker ? A. Yes.
- Q Were you only saying to your crew that you destroyed wreckage with a heavy heart ? A. I cannot remember that any more.
- Q Do you remember Cairns giving evidence yesterday ? A. Yes.
- Q He said that part of your remarks related to Allied planes bombing Germany ? A. Yes; I did not finish before what I wanted to say on that point.
- Q Please say it now. A. I said: "If we are influenced by too much sympathy we must also think of our wives and children who at home die also as the victims of air attack."
- Q Sympathy about the wreckage ? A. It was quite clear that the survivors would also die.
- Q And you did not mind whether they died or not ?
A. In my remarks over the loudspeaker I had said that I did care about it.
- Q You realised that people would die as a result of your shooting ?
A. Yes.

THE JUDGE ADVOCATE: Dr. Tolsen, do you want to re-examine ? That means that you can ask any question/arises out of the cross-examination, but you are not at this point allowed to ask any question without the leave of the Court which does not arise out of the questions which Colonel Halse has asked.

Re-examined by Dr. TODSEN.

- Q Why could you not help the survivors ? A. I had an order not to take any survivors on board.
- Q And there was no other possibility ? A. As I wanted to destroy the rafts I saw no other possibility to help them.
- Q Would it have been possible for any survivors to cling to any beams or pieces of wreckage ? A. Certainly only for a short time.
- Q The Prosecutor said that there was firing between the times of 8 and 1. Was the firing going on during the whole period ? A. No, with intervals.
- Q With long intervals ? A. I cannot remember that.
- Q As you shone your signal lamp at one raft were you aware of the fact that there were any more floating about ? A. Yes.
- Q Despite that you did not shine your signal lamp at the other rafts ? A. No.
- Q When you put your message through to the crew was it important to you to give all your reasons why you had wanted to destroy the rafts ? A. No, I did not do that in any case, I only said it was out of military or tactical reasons - which one of those two words I used I do not remember any longer.
- Q So therefore what you told the crew was more a kind of propaganda ?
- THE JUDGE ADVOCATE: You are suggesting the answers to him; you must try to confine yourself to questions which do not suggest an answer.
- DR. TODSEN: You have just told me that you did not give all the reasons for your decision to the crew; is that true ? A. Yes.
- Q What were you mainly concerned about when you were talking to the crew ? A. My main concern was to quieten down the more or less excited feelings and to improve the bad mood aboard.
- Q And slogans were sufficient for that ? A. I was only speaking for a very short time and only with slogans.
- Q When you gave the order to bring up small arms on the bridge how could it be interpreted below deck ? A. Either destined for the boarding party or for the security of the boat against another party.
- THE JUDGE ADVOCATE: How many times have you seen a ship sunk ? A. Five times.
- Q Have you ever seen a ship sunk which did not leave a large patch of oil on the surface ? A. They were not all tankers.
- Q I am not talking about tankers, I am talking about traces of oil from ships of any kind ? A. I tried twice to find any traces from ships but I was unable to find any.
- Q Do you say that a ship such as the "Pelorus" can be sunk without a trace of oil ? A. If it is a coal-burning ship it is probable.
- Q During the hours of darkness you were cruising on the surface, were you not ? A. Yes.

- Q What speed could this submarine do on the surface ? A. About 5 knots.
- Q You remained on the spot where the "Peles" was sunk for five hours, did you not ? A. Yes.
- Q Those five hours were hours of darkness, were they not ? A. No, the moon came up.
- Q Why did you not take advantage of the opportunity you had to get away as quickly as possible ? A. I did not see any immediate danger on this night.
- Q Why did not you get away ? A. Because I wanted to destroy the rafts.
- Q Would it not have been much safer for you and your boat to clear out as soon as possible ? A. No.
- Q During the hours that you were on the spot where you sunk the "Peles" did you make any effort to find out whether there was radio apparatus on any of the rafts ? A. No.
- Q You could have done so, could you not ? A. No.
- Q If you turned your signalling lamp on a raft to find out why it had not sunk, could not you have found out a little more ? A. No.
- Q Did anybody in the crew other than Lenz complain of the killing of survivors ? A. Yes.
- Q Who was that ? A. The first officer of the watch.
- Q Anybody else ? A. No.
- Q When you said that you regretted your decision was not that a reference to a decision to kill survivors ? A. Yes.
- Q Had you got a gun on this submarine ? A. Yes.
- Q Why not, if you wanted to destroy rafts, use that ? A. It is impossible to aim precisely with it.
- Q Even at a raft ? A. No.
- Q Do you mean that ? Could you not have used the gun to destroy rafts ? A. No, I could not use the 10.5 gun; I tried with the 2 centimetre gun.
- Q Of course, if you only wanted to destroy survivors a machine gun would be a better weapon, would it not ? A. No.

THE JUDGE ADVOCATE: If you want to ask anything on that, Dr. Todsén, I am sure the Court will let you.

DR. TODSEN: You have just been asked whether you regretted that survivors were being killed. Do you mean that you regretted that together with the destruction of the rafts it should be taken as unavoidable that also the survivors would perish ? A. I even had to take into consideration that during the destruction of the rafts survivors would be killed.

- Q Would not machine pistols have been a more appropriate weapon to shoot at survivors ? A. Yes.
- Q Are you quite sure that machine pistols were not used for shooting at survivors ? A. They were definitely not used.

- Q What speed could this submarine do on the surface ? A. About 5 knots.
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MAJOR LEECH: Is it open for the other defending counsel to cross-examine this witness ?

THE JUDGE ADVOCATE: Yes; I should have asked you before. Should they wish to do so they can do so tomorrow morning.

(At 1700 hours the Court is adjourned until 1000 hours tomorrow, Friday, 19th October, 1945.)